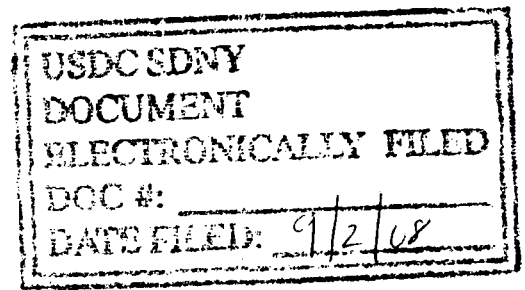


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
CALVIN WASHINGTON,

Petitioner,

- against -

SUPERINTENDENT DALE ARTUS,

Respondent.
-----X

ORDER

07 Civ. 7769 (DAB)(FM)

FRANK MAAS, United States Magistrate Judge.


Petitioner Calvin Washington ("Washington") commenced this pro se habeas proceeding on August 31, 2007. (Docket No. 1). By order dated March 3, 2008, I directed the respondent to file and serve its answer on or before June 6, 2008. (Docket No. 4). I subsequently granted the respondent two sixty-day extensions, making its answer due on October 6, 2008. (Docket Nos. 6, 8).

On July 31, 2008, Washington sent a letter to the Court in which he requested, in substance, that his first amended petition be stayed because he has filed a motion in Supreme Court, Bronx County, to vacate his judgment of conviction pursuant to Section 440.10 of the New York Criminal Procedure Law based on newly discovered evidence. Judge Batts granted Washington's request on August 20, 2008, and ordered Washington to make a written application to the Court to lift the stay at the appropriate time.

In Zarvela v. Artuz, 254 F.3d 374, 381 (2d Cir. 2001), the Second Circuit cautioned that such stays should be limited in time, with the petitioner ordinarily granted thirty days to initiate exhaustion and an additional thirty days to return to this Court once his claims are fully exhausted. Here, Washington has already complied with the first deadline. Accordingly, the Court's memorandum endorsement dated August 20, 2008, is hereby modified to state that Washington must file his second amended habeas petition within thirty days after exhausting his state court remedies with respect to his pending Section 440.10 motion.

SO ORDERED.

Dated: New York, New York
September 2, 2008


FRANK MAAS
United States Magistrate Judge

Copies to:

Hon. Deborah A. Batts
United States District Judge

Calvin Washington (No. 02-A-2339)
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